



North Dakota State Water Commission

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**Audio Conference Call Meeting
Governor's Conference Room - Ground Floor
State Capitol
Bismarck, North Dakota**

**June 5, 2009
11:00 A.M., CDT**

AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. ***Request to North Dakota Department of Health to Eliminate the North Dakota Pollutant Discharge Elimination System Water Quality Discharge Permit for the Devils Lake Outlet Project*** **
- D. ***Consideration of Funds for Preliminary Analysis of the Devils Lake Outlet Extension*** **
- E. ***Southwest Pipeline Project Contract S78EF Amendment, Seeding Portions of Contract 7-8E*** **
- F. Other Business
- G. Adjournment

**** BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

If auxiliary aids or services such as readers, signers, or Braille material are required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 328-4940 five (5) working days prior to the meeting. TDD telephone number is (701) 328-2750.

MINUTES

North Dakota State Water Commission Audio Conference Call Meeting Bismarck, North Dakota

June 5, 2009

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room at the State Capitol, Bismarck, North Dakota, on June 5, 2009. Governor John Hoeven, Chairman, called the meeting to order at 11:00 A.M., and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Douglas Vosper, Member from Neche

STATE WATER COMMISSION MEMBER ABSENT:

Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Lance Gaebe, Office of the Governor, Bismarck
Todd Sattler, North Dakota Office of Attorney General, Bismarck (via telephone)
L. David Glatt, North Dakota Department of Health, Bismarck
Dave Thompson, Prairie Public, Bismarck
Dale Wetzel, Associated Press, Bismarck
Terry Steinwand, North Dakota Game and Fish Department, Bismarck
Mary Lee Nielson, Mayor, City of Valley City (via telephone)
Ross Keys, Congressman Earl Pomeroy's Office, Bismarck (via telephone)
Scott Stofferahn, Senator Kent Conrad's Office, Fargo (via telephone)
Joe Belford, Devils Lake Downstream Acceptance Program (via telephone)

Fred Bott, Mayor, City of Devils Lake (via telephone)
Jeff Frith, Devils Lake Basin Joint Water Resource Board Manager (via telephone)
Jim Herda, Ramsey County Water Resource Board Office Manager (via telephone)
Terry Johnston, Devils Lake City Administrator (via telephone)
Craig Stromme, Devils Lake City Commission Member (via telephone)
Leo Walker, Minnewaukan (via telephone)
Richard Betting, People to Save the Sheyenne River, Valley City (via telephone)

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

Governor Hoeven announced the agenda would include consideration of Southwest Pipeline Project Contract S78EF Amendment No. 1, seeding portions of Contract 7-8E.

**NORTH DAKOTA DEVILS
LAKE OUTLET PROJECT -
REQUEST TO NORTH DAKOTA
DEPARTMENT OF HEALTH FOR
ELIMINATION OF NDPDES
PERMIT NO. ND0026247
(SWC Project No. 416-01)**

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. Construction commenced in the fall of 2002, and operation of the outlet began on August 15, 2005 within the guidelines of the North Dakota Pollutant Discharge Elimination System (NDPDES) Water

Quality Discharge Permit No. ND0026247 and the authorized modifications issued by the North Dakota Department of Health. The NDPDES water quality discharge permit had an expiration date of June 30, 2008, which was extended through June 30, 2013.

Devils Lake has risen over 3 feet in 2009 and because of the wet cycle that is in effect for the Devils Lake basin, U.S. Geological Survey studies show that a potential spill could again occur at the natural outlet on Stump Lake which has occurred in the geologic past. Secretary Frink explained that In order to reduce the risk of uncontrolled discharge, the volume of water that the Devils Lake outlet can transfer to the Sheyenne River must be maximized. In 2008, the Environmental Protection Agency (EPA) made a decision that water transfers are excluded from regulation of the Clean Water Act and that a NDPDES permit is not required. That decision is being challenged in court and the legal process could take at least two years.

Secretary Frink explained that elimination of the NDPDES permit for the Devils Lake outlet would assist in increasing the flow that can be released. Water quality standards on the Sheyenne River would still

need to be met, including the 450 mg/L sulfate standard. He noted that in 2008, the outlet would have discharged about three times the water by following the 450 mg/L sulfate standard rather than the constraints included in the permit. If the permit were eliminated, the State Water Commission could enter into a memorandum of understanding with the North Dakota Department of Health to govern the operation of the Devils Lake outlet.

David Glatt, North Dakota Department of Health, indicated that the federal environmental rules no longer require the permit for the Devils Lake outlet. He stated that the request before the State Water Commission appears to be reasonable and will be considered by the Department.

The State Water Commission considered a draft letter to the North Dakota Department of Health requesting the elimination of North Dakota Pollutant Discharge Elimination System Water Quality Discharge Permit No. ND0026247 for the Devils Lake outlet. It was the recommendation of Secretary Frink that the State Water Commission approve the draft letter as presented, and that the State Water Commission enter into a memorandum of understanding with the North Dakota Department of Health to govern the operation of the Devils Lake outlet.

It was moved by Commissioner Thompson and seconded by Commissioner Berg that the State Water Commission approve the draft letter as presented to the North Dakota Department of Health requesting the elimination of North Dakota Pollutant Discharge Elimination System Water Quality Discharge Permit No. ND0026247 for the Devils Lake outlet; and, that the State Water Commission enter into a memorandum of understanding with the North Dakota Department of Health to govern the operation of the Devils Lake outlet. (Executed letter to the North Dakota Department of Health is attached hereto as APPENDIX "A")

Commissioners Berg, Foley, Hanson, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT - APPROVAL OF
STATE FUNDS (\$50,000) FOR THE
PRELIMINARY ANALYSIS OF THE
DEVILS LAKE OUTLET EXTENSION
(SWC Project No. 416-01)***

The existing Devils Lake outlet is limited due to water quality constraints, and although the current 2009 conditions are favorable for discharge of 100 cubic feet per second (cfs), normally the volume of water is much less due to sulfate concentrations in the Sheyenne River and

Devils Lake. The water quality in the northwest portion of Devils Lake is considerably better than that which is found in Round Lake, and the area north of Highway 19, commonly referred to as Pelican Lake and the lower Mauvais coulee, has water that is usually below the 450 mg/L sulfate standard on the Sheyenne River.

Secretary Frink explained that evaluations are being considered, including alternate routes, that would allow the Devils Lake outlet to be run more continuously. A proposal being considered is the construction of an outlet extension with the inlet near Minnewaukan and a pipeline to the existing Round Lake reservoir, with the water then flowing through the existing outlet features. Secretary Frink stated that the new inlet would increase the total discharge capacity from 100 cfs to 250 cfs. He stated there are issues and considerations that need to be evaluated including the satisfaction of federal/state permits.

Governor Hoeven emphasized that steps are necessary to slow the rise of Devils Lake and head-off the possibility that its overflow could spill naturally into the Sheyenne River through the Tolna Coulee on the lake's east side. He stressed the importance of moving more water out of Devils Lake not only to protect the people living in the Devils Lake basin but also to protect the downstream interests.

It was the recommendation of Secretary Frink that the State Water Commission approve \$50,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium, for the preliminary analysis of the Devils Lake outlet extension.

It was moved by Commissioner Olin and seconded by Commissioner Foley that the State Water Commission approve an allocation not to exceed \$50,000, from the funds appropriated to the State Water Commission in the 2007-2009 biennium, for the preliminary analysis of the Devils Lake outlet extension. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
AUTHORIZE AMENDMENT NO. 1
TO CONTRACT S78EF
(SWC Project No. 1736)**

On March 23, 2009, the State Water Commission authorized the secretary to the State Water Commission to award Southwest Pipeline Project contract S78EF to Precision Landscaping and

Construction, Minot, ND, in the amount of \$99,930.74. Contract S78EF involved seeding approximately 488 acres of pipeline easements based on plan and profile measurements of disturbed land associated with the pipeline installation under Southwest Pipeline Project contract 7-8F and portions of contract 7-8E.

The remaining portion of Southwest Pipeline Project contract 7-8E is ready to be seeded and the contractor has indicated a willingness to do the work at the same unit prices specified in contract S78EF (approximately 252 acres at a cost of \$50,382). It would be advantageous to the project, landowners, and the pipeline contractor to have this work completed. Amendment No. 1 to contract S78EF would add the remaining portion of contract 7-8E, and extend the completion date to June 22, 2009.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to approve Amendment No. 1 to Southwest Pipeline Project contract S78EF for seeding the remaining portions of contract 7-8E, and extend the contract completion date to June 22, 2009.

It was moved by Commissioner Olin and seconded by Commissioner Vosper that the State Water Commission authorize the secretary to the State Water Commission to approve Amendment No. 1 to Southwest Pipeline Project contract S78EF for seeding the remaining portions of contract 7-8E, and that the contract S78EF completion date be extended to June 22, 2009.

Commissioners Berg, Foley, Hanson, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**STATE WATER COMMISSION
MEETING IN FARGO, ND, ON
JUNE 23, 2009**

Commissioner Thompson requested that the next meeting of the State Water Commission scheduled for June 23, 2009 be held in Fargo, which would

include a tour of the flood damages in the Fargo/West Fargo areas and the Fargo flood control project; the Commission members concurred. On June 24, 2009, the State Water Commission will participate in the tour on the "Devils Lake Solutions" presented by the North Dakota Water Education Foundation and the Devils Lake Basin Joint Board.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference call meeting at 11:45 A.M.



John Hoeven, Governor
Chairman, State Water Commission

Dale L. Frink
North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission